APPEAL NO. 021157
FILED JUNE 20, 2002

Following a contested case hearing held on January 14, 2002, with the record closing on January 28, 2002, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), the hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable occupational disease injury in the form of bilateral pronator teres syndrome on _____ [sic], ____, and that she had disability, as that term is defined in Section 401.011(16), from _____, through January 11, 2002. The appellant (carrier) has requested our review of these determinations on evidentiary sufficiency grounds and also asserts error with respect to the admission and exclusion of certain documents and the denial of a hearing subpoena. The claimant responded, urging affirmance and the absence of reversible error. In Texas Workers' Compensation Commission Appeal No. 020502, decided April 4, 2002, the Appeals Panel reversed the hearing officer's decision and remanded for the reconstruction of one of the audiotapes, which recorded the hearing. In her Decision and Order on Remand, issued on April 16, 2002, the hearing officer states that the problem with the defective audiotape was rectified and she was resubmitting her original Decision and Order. The carrier has once again requested our review and the claimant has filed a response.

DECISION

Affirmed, as reformed.

We note at the outset that the hearing record reflects that the hearing officer identified and admitted Hearing Officer's Exhibit Nos. 1 through 6 into evidence. The hearing officer's Decision and Order states that only three hearing officer's exhibits were admitted. The hearing record contains documents marked as Hearing Officer's Exhibit Nos. 1 and 2, two documents marked as Hearing Officer's Exhibit No. 3, and documents marked as Hearing Officer's Exhibit Nos. 4 through 6. One of the documents marked as Hearing Officer's Exhibit No. 3, which is the document identified as Hearing Officer's Exhibit No. 3 in the Decision and Order, is a report from Dr. C dated January 23, 2002, which, at the request of the carrier, was admitted into evidence after the hearing adjourned but before the record was closed. The document identified at the hearing as Hearing Officer's Exhibit No. 3 is the Carrier's Request for Additional Discovery. This document does accompany the record. Accordingly, we reform the record to reflect that there are seven hearing officer's exhibits and that the report of Dr. C should be marked as Hearing Officer's Exhibit No. 7. We also note that although the stipulations, evidence, and testimony all related to a date of injury of _____, the hearing officer's Finding of Fact No. 2 states the date of injury as _____. To correct this apparent typographical error, we reform the finding to _____.

The claimant testified that on February 28, 2000, she commenced employment with (employer) packing sacks of product into boxes, closing the boxes, and placing the boxes on pallets; that she began experiencing pain in her upper extremities on _____; that the pain increased and she reported it to her supervisor on _____; that on the latter date, she commenced treatment for this pain with Dr. H, who had previously treated her for injuries sustained in a motor vehicle accident; and

that Dr. H took her off work and did not release her for return to regular work until January 11, 2002, after which she obtained employment as a cashier at a convenience store. The medical evidence was sharply in conflict concerning the precise nature of the claimant's repetitive trauma injuries in her upper extremities and whether such injuries were caused by her work as a packer for the employer during the relatively short period she was employed. Dr. H's testimony related the claimant's diagnosis to the repetitive motions of her work for the employer and felt that his diagnosis and opinion on causation was supported by Dr. D, an electrodiagnostician, and by Dr. M, an orthopedic surgeon, to whom Dr. D referred the claimant for diagnosis and treatment. The carrier contended, in essence, that the claimant's medical evidence amounted to "junk science" and relied on the opinions of two peer review doctors to the effect that the short time the claimant worked for the employer and the mechanics of her duties did not result in the claimed repetitive trauma injuries to her upper extremities.

The claimant had the burden to prove that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence (St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.)).

As noted, the evidence on causation is in sharp conflict in this case. However, it is not a basis for reversal that another fact finder may have drawn different inferences from the evidence. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The carrier has also asserted error in the hearing officer's order denying the carrier's request for a subpoena duces tecum and a deposition upon written questions of Mr. L, the claimant's supervisor at her new employment, related to the terms of the claimant's current employment and the disability issue. The claimant opposed this request for additional discovery, contending that most of the information had already been provided. Further, the claimant is subject to the carrier's cross-examination at the hearing. The carrier's request was not received by the Texas Workers' Compensation Commission until January 7, 2002. Being mindful of the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 142.12 and 142.13 (Rules 142.12 and 142.13), we are satisfied that the hearing officer determined that no good cause for the additional discovery was shown and that she did not abuse her discretion in denying the carrier's request. Morrow v. H.E.B. Inc., 714 S.W.2d 297 (Tex.

1986). We are similarly satisfied that the hearing officer did not abuse her discretion in admitting the claimant's medical evidence and allowing the testimony of Dr. H over the carrier's global objection that all such evidence constituted "junk science" and should not be admitted. The carrier cites certain U.S. Supreme Court and Texas Supreme Court cases in support of its contentions. The Appeals Panel has previously addressed this evidentiary matter in a number of previous decisions. *See, e.g.*, Texas Workers' Compensation Commission Appeal No. 991964, decided October 25, 1999. *See also* Sections 410.165(a) and (b). Finally, the carrier asserts error in the hearing officer's sustaining the claimant's objections to five of its exhibits on relevance grounds. We have examined those exhibits and are satisfied that the hearing officer did not abuse her discretion in rejecting them. Even were we to find that the hearing officer did abuse her discretion in failing to admit one or more of these exhibits, we are satisfied that her ruling would not constitute reversible error. *See* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The decision and order of the hearing officer are affirmed as reformed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PA** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL
DALLAS, TEXAS 78201.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Robert W. Potts
Appeals Judge